

**Before the
Federal Communications Commission
Washington, D.C. 20554**

CERTIFIED MAIL # 7001 0320 0002 9838 7561
RETURN RECEIPT REQUESTED

In the Matter of)	
)	
Nextel WIP License Corp.)	File Number: EB-02-HL-078
Palehua Ridge, Hawaii)	NAL/Acct. No. 200232860002
)	FRN 0002-2070-66
10120 West 76 th Street)	
Eden Prairie, MN 55344)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: September 30, 2002

By the Enforcement Bureau, Honolulu Resident Agent Office:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Nextel WIP License Corp., ("Nextel"), apparently willfully violated Section 301 of the Communications Act of 1934, as amended ("Act")¹ by operating a radio station without Commission authorization. We conclude, pursuant to Section 503(b) of the Act,² that Nextel is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000).

II. BACKGROUND

2. On August 27, 2002, a Honolulu Office Agent received a complaint of interference from the Hawaiian Electric System Operations Department. The Waiau power plant had been receiving severe wide-band continuous interference to its licensed Business Radio station WPTA721 operating on 854.7875 MHz for the past several months. A database search found no other licensees assigned to that frequency in the area.

3. On August 28, 2002, a Honolulu Office Agent determined that the interfering signal was a Nextel transmitter operating on 854.7875 MHz. The Agent confirmed the unauthorized operation with a Nextel engineer who advised that Nextel's license for a trunked SMRS station at Palehua Ridge, Hawaii did not authorize operation on 854.7875 MHz. A Nextel technician was dispatched immediately to remove the transmitter from the air.

III. DISCUSSION

4. Section 503(b) provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license or fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term "willful" as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.³

¹ 47 U.S.C. § 301.

² 47 U.S.C. § 503(b).

³ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate

5. Section 301 of the Act sets forth generally that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States except under and in accordance with this Act and with a license granted under the provisions of this Act. The Rules governing the licensing and operation of trunked SMR stations are set forth under Subpart S of Part 90 of the Rules.⁴

6. Based on the evidence before us, we find that Nextel willfully violated Section 301 of the Act by operating a station without a proper license. The base forfeiture amount set by *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, ("*Forfeiture Policy Statement*"),⁵ and Section 1.80 of the Rules,⁶ for operating an unlicensed radio station is \$10,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act,⁷ which include the nature, circumstances, extent, and gravity of the violation(s), and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require. Applying the *Forfeiture Policy Statement* and the statutory factors to the instant case, a \$10,000 forfeiture is warranted.

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80 of the Commission's Rules, Nextel WIP License Corp., is hereby NOTIFIED of an APPARENT LIABILITY FOR A FORFEITURE in the amount of ten thousand dollars (\$10,000) for violation of Section 301 of the Communications Act of 1934, as amended.⁸

8. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Nextel SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment must include the FCC Registration Number ("FRN") and the NAL/Acct. Number referenced in the caption.

9. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Washington, D.C. 20554, Ref: EB-02-HL-078; and MUST INCLUDE THE NAL/Acct. No. referenced in the caption.

10. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

commission or omission of such act, irrespective of any intent to violate any provision of this Act" *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁴ 47 C.F.R. § 90.601 *et seq.*

⁵ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁶ 47 C.F.R. § 1.80.

⁷ 47 U.S.C. § 503(b)(2)(D).

⁸ 47 U.S.C. §§ 301 and 503(b); 47 C.F.R. §§ 0.111, 0.311 and 1.80.

11. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁹

12. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail # 7001 0320 0002 9838 7561, Return Receipt Requested to Nextel WIP License Corp., 10120 West 76th Street, Eden Prairie, MN 55344.

FEDERAL COMMUNICATIONS COMMISSION

Ryan Hagihara
Resident Agent, Honolulu Office

Cc: Nextel
3375 Koapaka Street, Suite D155
Honolulu, HI 96819

⁹ See 47 C.F.R. § 1.1914.